

HAMPTON PLANNING BOARD MINUTES

September 5, 2007– 7:00 PM

PRESENT: Tracy Emerick, Chair
Robert Viviano, Vice-Chair
Fran McMahon, Clerk
Jim Workman, Selectman Member
Keith Lessard
Tom Higgins
Bill Faulkner, Alternate
James Steffen, Town Planner

ABSENT:

I. CALL TO ORDER

Chairman Emerick began the meeting at 7:00 PM by introducing the Board members and leading the Pledge of Allegiance to the flag.

A moment of silence was taken in memory of Mr. Thomas Gillick.

II. ORDER OF BUSINESS

Appointment of alternate member to fill member Gillick's seat.

Appointment of Mr. Faulkner to fill the seat of Mr. Gillick for the remainder of his 6-month term (March 2008).

MOVED by Mr. Viviano

SECOND by Mr. Higgins

VOTE: 7-0-0 **MOTION PASSED**

III. WITHDRAWALS AND POSTPONEMENTS

7-54 Nyhan, William
Special Permit to Impact Wetlands Conservation District to construct single family home at 3 Gale Road
Continued to October 3, 2007 meeting

7-64 Bernard Christopher
9-lot subdivision at 87 Barbour Road
Map 91/92 Lot 4-1/5
Owner of Record: Arthur Brown
Continued to October 3, 2007 meeting

IV. ATTENDING TO BE HEARD

- **Tony Fallon**
Optional Preliminary Consultation – Mixed-Use Project at
125 Ocean Boulevard
Postponed until September 19, 2007 meeting

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V. NEW PUBLIC HEARINGS

**7-76 Erwin, Susan W.
Donovan, Frank J.**
Lot Line Adjustment at 205 Winnacunnet Road 4 Wheaton Lane Terrace
Map 191 Lot 23 & 23-1

APPLICANT

Mr. Cote representing the applicants outlined the lot line adjustment as explained on the application to the Board.

The parcel of land is approximately 2, 254 square feet in size and abuts 4 Wheaton Terrace.

The transfer of land does not violate any zoning requirements.

BOARD

Brief discussion between Mr. Cote and the Board on the question of how this sliver of land came about.

MOVED by Mr. Viviano to approve the minor lot line adjustment with the recommendations of the Town Planners memo dated August 28, 2007

SECOND by Mr. Lessard

VOTE: 7-0-0 **MOTION PASSED**

7-77 Zuba, Michael
Special Permit – Wetlands Conservation District to level uneven yard in the back and side yard at 40 Tide Mill Road
Map 231 Lot 2

APPLICANT

Mr. Zuba explained his special permit application and that it is an after the fact approval. The yard was there but was not level; he stated that he has filled right up to the wetlands to even out the yard.

BOARD

Mr. Emerick asked the applicant if he had attended the Conservation Commission meeting regarding his property and he replied that he did not.

Mr. Lessard asked Mr. Zuba to explain the plan and asked if he had filled up to the edge wetlands. Mr. Zuba explained the plan and that he did fill up to the edge of the wetlands.

Mr. Zuba explained that the dotted line represents the area where he added the fill.

Mr. Viviano asked where the area is to be restored. Mr. Zuba explained that the areas that are identified as A and B on the map are to be restored.

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PUBLIC

Ms. Goethel explained that fill has been gradually brought in over two years, and has damaged the buffer area and wetlands. The Conservation Commission would like to see buffer area and wetlands restored. Also in that area is the discharge from a sump pump. It appears that the increased Phragmites growth is due to the added freshwater from the pump.

Mr. Zuba stated that the sump pump is exactly the same length and in the same place as when the house was built.

Ms. Goethel stated that the Commission has been in contact with Mr. Zuba about their concern and the problems that the fill is creating. Ms Goethel stated that Mr. Zuba was notified of the Commission's concern and did not respond to the Commission until an enforcement action was taken. Ms. Goethel asked that the Board deny the application until Mr. Zuba and his engineer submit a restoration plan.

BOARD

Mr. Emerick and Ms. Goethel discussed the action request of the Commission as to whether this should be continued or denied. With denial, that applicant would need to follow the procedures of reapplying. It was decided a continuance would be appropriate to allow the applicant to work with the Commission on the restoration plan.

General discussion on the subject of requiring a bond to insure that the work is done i.e. restoration plans etc., for "after the fact" special permit approvals.

Mr. Lessard stated he is very frustrated with after the fact application and would like to inform the public that the "after the fact" work special permit requests have to stop.

Mr. Emerick directed the Mr. Zuba to work with the Commission about the restoration plan and resolve the issue of the sump pump.

MOVED by Mr. Viviano to continue the hearing to October 17, to allow the applicant to meet with the Conservation Commission to resolve the issue of how much fill must be removed, and submission of a restoration plan. In addition, the applicant shall employ best management practices (silt fencing and hay bales, etc.) and removal of the sump pump pipe discharge into the wetlands.

SECOND by Mr. Faulkner

VOTE: 7-0-0 **MOTION PASSED**

07-78 Ivan Stanek

Subdivision to create one new lot at 106 Locke Road

Map 179 Lot 22

Waiver(s): Subdivision Regulations, Sections V.E.1, V. E. 2, V.E.7, and V.E.14

APPLICANT

Mr. Donohue represented Mr. Stanek. He explained the history of this lot and that they have received Zoning Board of Adjustment approval for variances on the frontage, square and

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minimum lot width requirements. The two lots conform to square footage and the existing house on lot is not compromised with respect to any zoning violations.

No new roadway will be constructed as the frontage is and access will be from Locke Road. The driveway surface will be asphalt.

Mr. Cote submitted a letter stating that there are no wetlands on the property.

BOARD

The lot size of each lot was discussed and it was explained that both lots conform to zoning with the additional land area due to the aquifer protection district square footage requirement.

Mr. Higgins inquired about the rounded corners of the lot. Mr. Cote explained it is a historical surveying style.

Mr. Emerick questioned if the driveway would be gravel. It was assured that it would asphalt pavement.

Mr. Steffen noted that the applicant would need a driveway permit from DPW.

Mr. Donohue stated that they will obtain the driveway permit and that the design of the driveway was done to offset it from the driveway across the street.

MOVED by Mr. Lessard to the requested grant waivers for the following sections of the Subdivision Regulations: V.E. 1, 2, 7 and 14.

SECOND by Mr. McMahon

VOTE: 7-0-0 **MOTION PASSED**

MOVED by Mr. Lessard to approve the 2-lot subdivision with the conditions of the Town Planner's memo of August 28, 2007 and payment of the school impact fee and the sewer fee.

SECOND by Mr. McMahon

VOTE: 7-0-0 **MOTION PASSED**

07-79 Soussan, Benjamin & Laura

Special Permit- Wetlands Conservation District to replace and augment stone to reinstate wall at 968 Ocean Blvd
Map 152 Lot 22

APPLICANT

Ms. Laura Soussan as stated in her application to the Board explained the history of the property and the history of the sea wall. She explained the hand written documents from Eben Lewis of the Department of Environmental Services (DES). She stated she followed these and rebuilt the wall to follow the contour of the abutter's wall. The intent was to ensure the safety and stabilization of the sea wall. The design of the sea wall needs to be angled and pitched in a particular way to ensure the safety and stabilization of the wall.

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Mr. Higgins asked Ms. Soussan who did the work and Ms. Soussan responded that Stan Saracy performed the work.

Mr. Higgins asked Ms. Soussan about the encroachment of rocks within the right of way; and who owns the right of way.

Ms. Soussan explained that she and her husband own the “right of way” it as it is on their property, they pay taxes on the right away because it is part of the property. The deed states that the description of the “right-of-way” allows certain property owners to use it for their access to the beach. The encroachment of the rocks in that area is to stabilize her foundation. The foundation of the house is very close to the right-of-way, and the foundation needs to be protected from the wave action of the ocean.

PUBLIC

Ms. Priscilla Fanning – 4 Smith Avenue. Ms. Fanning has concerns with regard to the right of way for the eighty-eight families of the Greenlands Cottages, which crosses over the Soussan’s property. This right away is 8-feet wide and is granted to the owners of the Greenland’s Cottages through references on their deeds, as well as referenced on the Soussan’s deed. Currently the right-of-away is being encroached by approximately 3-feet by the new rock wall.

Michael Melvin – Acorn Street. He is concerned about the rocks on the public beach, and not on the Soussan’s property. He spoke with Eben Lewis and was told that the Soussan’s did not have permission to place rocks on the beach. He feels that they should have a wall installed instead of the rocks to preserve the public beach area. He also questioned the disappearance of the out fall box from Rt. 1A.

Ms. Soussan stated that she informed the Department of Public Works about the disappearance of the box a few years back and was told that the line connected to the box had been re-directed and not to be concerned.

Ms. Goethel – Conservation Commission. Ms Goethel stated that she informed Ms. Soussan about the process that needed to be followed to secure the right permits and approvals for the repair and augmentation of the rocks on July 19, 2007. Ms. Goethel requests that an “as-built” plan be prepared to compare the differences between the plan dated 2000 and what has occurred now; this would enable the Commission and Planning Board to clear up the questions and issues of the location and increase of rocks; and to determine the public area of the beach.

Ms. Goethel explained that the State letter was for repositioning the rocks, and not bringing in more rocks. The Planning Board does not need to deal with the State issues, as the Conservation Commission is the board of review for the State.

Donald Fanning – Greenland Cottages. He asked the Board if the rocks are on public property

Gary Boyle – 965 Ocean Blvd. He stated he is looking for balance between the property owners right to protect their homes and the rights of the public to access the beach.

Jackie Melvin – Acorn Street. She stated that she has concerns about the rocks on the public beach- extending out and no longer being able to walk along the beach.

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Janet McLean – Smith Street. She asked what were the rights of the Town, property owners and the general public in this matter and what were the notification requirements for these applications were.

BOARD

Mr. Higgins discussed the issue of the stones in the right of way and that the stones need to be removed to allow the deeded access.

Mr. Viviano asked if it was DES (Eben Lewis) that said the rocks need to be in line with the abutter's rock wall.

Mr. Higgins explained that the Board should follow the Conservation Commission's recommendation of the rock wall not extending farther toward the ocean than the original wall. Mr. Higgins understands the intent of DES; however, the problem the Board is encountering, is that these applications for repair or stabilization of the cement or rock walls are not following a consistent line. He felt that maybe the Board should deny the application to see how it plays through.

Mr. Emerick stated that the Planning Board is only acting on a "After the fact" permit. The Board is only approving the rocks on the applicant's property. He explained that the issue of DES wanting the wall to match the other walls is not within their preview; the board can only approve the rocks on the property of Ms. Soussan.

Mr. Higgin's concern is that the rocks in the deeded right way should be removed. The stabilization of the foundation should not interfere with the path (way) to the beach.

MOVED by Mr. Higgins: To remove the rocks within the deeded right-of-way, to include the Conservation Commission's letter of recommendations, including trying to remain close to the original footprint, with the understanding that DES may over rule the issue of the rocks not staying within the original boundary.

Motion suspended for continued discussion.

DISCUSSION

The subject of the Cease and Desist order was brought up.

Ms. Goethel explained the Building Inspector's role with the cease and desist order.

Mr. Higgins asked why the Board was not informed as this type of information would influence the decision of the Board.

Mr. Steffen stated that the State emergency authorization was to stabilize the wall.

Ms. Goethel explained that the cease and desist order was verbal. And that Mr. Emerick was contacted by Ms. Soussan and he informed her that she should follow the Building Inspector's guidelines.

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Mr. Fanning asked questions about the limit of the property relative to the ocean, and how far the rocks go over the property line. Members of the Board explained to Mr. Fanning that DES would allow the extension, not the Planning Board. It was explained that the Planning Board is only approving the temporary stabilization permit.

Mr. McMahon asked for clarification of items listed in the Conservation Commission letter as he felt that the Board is not in the position of engineering walls.

MOTION by Mr. Higgins: To remove the rocks within the deeded right-of-way, to include the Conservation Commission's letter of recommendations, including trying to remain close to the original footprint, with the understanding that DES may over rule the issue of the rocks not staying within the original boundary. To work in the Wetlands Conservation District to replace and argument the rock wall subject to recommendations of the Conservation Commission's letter of August 31, 2007. To remove the following phrases; item 1) "and placed higher onto the wall so that they do not wash away" and item 2; "okay of the final structure"; and the installation of granite boundary markers to delineate the deeded right-of-way.

SECOND by Mr. Viviano

VOTE: 7-0-0

MOTION PASSED

07-80 Gilman, Lisa J.

Metzger, Timothy

Lot Line Adjustment at 41 & 47 Little River Road

Map 128 Lot 29 & 29-2

APPLICANT

Mr. Cote representing the applicant detailed the lot line adjustment as presented in the application.

BOARD

After a brief discussion, the board determined that this proposal was a solution to the driveway being to close to the property lines.

MOVED by Mr. Viviano to approve the lot line adjustment as shown on Plan # with the Town Planner's recommendations of August 28, 2007.

SECOND by Mr. Faulkner

VOTE: 7-0-0

MOTION PASSED

07-81 The Napoli Group, LLC

Site Plan Review: To amend site plan to provide for 2 Way drive-through communications at 663 Lafayette Road

Map 126 Lot 14

Waiver(s): Site Plan Regulations, Section V.E Detailed Plan

Owner of Record: Horst & Ingeburg Martinen

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APPLICANT

Mr. Peter Saari representing Timothy Doyle and the Napoli Group explained the request is to amend the Site Plan entitled “Site Plan” Sheet C-1 Dated 1-10-1997 for the installation of the two-way speaker system.

The speaker system will only generate 70 decibels at close range, and gave examples of decibel levels for the following situations: a noisy restaurant is 80 decibels, normal conversation is 60 decibel. Mr. Saari explained that the farther away one is from the system the lower the level of decibels become. In addition, the level of decibel one may hear at three feet may not be heard 15 feet away.

BOARD

Discussion by board members ensued about notification to the abutters of this project and if the Board had received any letters concerning this issue.

Mr. Lessard asked the applicant for other locations in which they have these systems. He also asked if it will continue to have the digital display of items ordered and what the hours of operation will be.

Mr. Doyle responded that this system is in the Seabrook, Exeter, and Portsmouth locations and the display will continue to be digital. The hours are 6:00 am to 11:00 pm and will not change.

MOVED by Mr. Lessard to grant the requested waiver of Section V. E, Detailed Plan and to accept the amended site plan dated 08-16-07 without the wording “Conceptual Plan” on the final plans, and to limit the system’s maximum decibel level to 70.

SECOND by Mr. Viviano

VOTE: 6-0-1 Mr. Workman opposed on tradition. **MOTION PASSED**

VI. CONINUED PUBLIC HEARINGS

7-54 Nyhan, William

Special Permit to Impact Wetlands Conservation District to construct single family home at 3 Gale Road

Continued to October 3, 2007 Meeting

7-64 Bernard Christopher

9-lot subdivision at 87 Barbour Road

Map 91/92 Lot 4-1/5

Owner of Record: Arthur Brown

Continued to October 3, 2007 Meeting

VII. CONSIDERATION OF MINUTES of 08/15/07

- Page 1, last paragraph, last sentence – after the word “condominium” to add the word “conversion”.

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- Page three; third paragraph, first sentence after the wording “is not a defacto approval for three units” – to insert “as stated by the owner Mr. Morganstern”.
- Page four; fourth sentence after the word “issue” change the word mote to “mute”.

VIII. READING OF CORRESPONDENCE

▪ Municipal law Lecture Series Flyer

Mr. Steffen explained the series and informed the members that there money in the budget for them to attend. The Board members wishing to participate are to inform the Planning Office.

IX. OTHER BUSINESS

▪ Review Surety Bond establishment for Cassie Lane (691 Exeter Road formerly the DeNiro Corporation)

Mr. Steffen gave a brief history of the 4-lot development and noted that a new owner (former owner DeNiro) has presented the bond to do the road and site infrastructure. DPW has reviewed the bond and construction estimates and recommends that the Board accept the bond.

MOVED by Mr. Higgins to accept the Bond Surety.

SECOND by Mr. Workman

VOTE: 7-0-0 **MOTION PASSED**

▪ NROC - Appointment of the Planning Board Representative

Mr. Steffen informed the Board with the unfortunate passing of Mr. Gillick the Planning Board would need to appoint a new representative to NROC Program.

MOVED by Mr. Emerick to appoint Mr. Faulkner as the Planning Board’s NROC representative.

SECOND by Mr. Higgins

VOTE: 7-0-0 **MOTION PASSED**

▪ NROC – The Natural Resource Outreach Coalition.

Mr. Steffen explained the NROC Program. It stands for Natural Resource Outreach Coalition and includes a team of state, regional and nonprofit organizations that assist coastal watershed communities across the State in raising awareness about environmental dangers posed by development.

The goal of the presentation is to highlight some of the negative impacts of development and to present options for dealing with growth in a way that protects open spaces, wildlife habitat and natural water treatment and flood-control resources. It will bring town officials and residents together to discuss practical ways of balancing growth

The meeting is from 7 to 9 pm at the Hampton Academy on September 12, 2007.

X. NEW BUSINESS

Mr. Higgins initiated a discussion about amending Board’s applications and plan submittal documents to increase the number of copies provided.

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DISCUSSION

Board members discussed the issue of there not being enough applications and plans for the board members to review during the hearings. In addition, the Board members discussed the problem of applicants are not able to receive correspondence from the Town departments concerning their applications before the meeting. It was noted and understood that information can still be submitted at the meeting from abutters and planning staff.

The board also asked to have the application form include an email address to allow for the dissemination of information received by the Planning Office before the meeting, and to request that Special Permit applicants produce pictures, if possible, of the properties before the change.

MOVED by Mr. McMahon to require that eight copies of the application and plans be submitted to the Board for all applications and add to the application form a request for an email address.

SECOND by Mr. Lessard

VOTE: 7-0-0

MOTION PASSED

XI. OTHER BUSINESS CONTINUED

▪ 2008-2014 Capital Improvement Program (CIP) Final Report and Recommendations

Mr. Emerick explained the new process for the recommendations contain in the CIP Final Report that will be presented to the Selectmen.

MOVED by Mr. McMahon to accept the 2008-2014 CIP Final Report and Recommendations and to forward it onto the Board of Selectman.

SECOND by Mr. Lessard

VOTE: 7-0-0

MOTION PASSED

▪ Plan NH Design Charrette for September 21 & 22.

Mr. Emerick and Mr. Steffen gave a brief overview of Plan New Hampshire and what the topic of discussion will be for the Charrette that will be held. The focus area includes the old town hall, library, and uptown fire station.

XII. ANNOUNCEMENTS

The continuation of the public input session on new zoning for the beach area will be held at the next meeting (September 19, 2007) of the Planning Board.

XIII. ADJORNMENT

Meeting adjourned at 9:05PM

Respectfully Submitted,

Kristina G. Ostman
Planning Coordinator